

## **REMARKS**

Receipt of the Office Action of February 27, 2006 is gratefully acknowledged.

Claims 12 and 14 - 23 have been considered and finally rejected as follows: (1) claims 12, 14 - 16, 22 and 23 are finally rejected as anticipated by Bosko under 35 USC 102(b); (2) claim 17 is finally rejected as unpatentable under 35 USC 103(a) over Bosko in view of Collier; and (3) claims 18 - 21 are rejected as unpatentable under 35 USC 103(a) over Bosko in view of Jackson.

These rejections were and are once again respectfully traversed.  
On reconsideration, please consider the following points:

(1)

In the rejection based upon 35 USC 102(b), the examiner refers us to col. 5, lines 40 - 45 and quotes Bosko as stating that "Short or long bars can be used ," but the "short or long bars " are "used to change from dumbbells to barbells." Most people know that a dumbbell is usually engaged by a single hand, and a dumbbell by both hands of the user. Certainly, the dumbbell would not be "approximately in the range of the length of the shoulder span of the person using it," as recited in the claims. The barbell might have the extent noted, but it would be too massive for the user to ever consider placing the spheres in the palms of their hands. Consider also, line 43 and 44 of col. 5, wherein Bosko states that "hollow steel balls can be used," and that these spheres can each hold "10 gallons of liquid....which would give a weight of 160 lbs." A weight of 160 lbs would be difficult for most men to handle and certainly most women could not handle it. Moreover, to expect the user to use this weight by engagement with the palms of one's hands is simply attempting to stretch the teaching of Bosko way beyond any reasonable interpretation.

The examiner suggests that all that matters is that "Applicant has apparatus claims" and not "method claims." That is true, but the distinctions noted *assist in defining structure and not method*. When one considers the recitation in claim 12 that the end element has a spherical region "adapted to the palm of the hand of a training person," one can only conclude that this recitation relates to structure not method.

It is clear that the examiner has taken the position that a bar with end elements can never be patented over a dumbbell or barbell because a dumbbell or barbell has a bar and end elements. If this logic is accepted, then an internal composition engine, for example, with a newly shaped cylinder head cannot be patented because engines with cylinder heads are known. If this is the approach we should be taking then very little can be patented.

(2)

The examiner states that "The prior art of record possess the capability of being utilized in any manner that the user desires." And what user would desire to use a dumbbell or barbell that weights 160 lbs between the palms of their hands such that the dumbbell or barbell is supported only by the palms of the user's hands? It is inconceivable.

Examinations must employ reality and conclusions reached as a result of the examination must not be exaggeration.

(3)

The examiner also states "This range is very broad, since the palm of the hand of a person using it may be on any size and shape," referring to the claimed limitation that the diameter of the end element is "adapted to the palm of the hand of the person using it." It is respectfully submitted that this range *is not very broad*. The limitation recited in the claims is to be related to the diameter of the element not to the hand of the user. People do indeed have different sized palms, but the difference can in no way equate to the different size dumbbells or barbells that exist

in the public domain.

The examiner cites MPEP 2131.03. This section of the MPEP also states that "sufficient specificity to constitute an anticipation under the statute [35 USC 102] " is necessary. We see no "sufficient specificity" in Bosko.

*The limitations which relate the structure of the training apparatus in terms of size and location should not be ignored or dismissed out of hand.*

(4)

Regarding the declarations filed by applicant, the examiner states that the declarations were taken into consideration. But applicant is not told what effect these declarations had or why they were not effective. It is necessary to know what impact these declarations had in the examiner's determination so that the examiner's action can be reviewed by the Board of Appeals.

In an ex parte proceeding, the weight of opinion in a 132 declaration must be given its due consideration. To state only that they were considered without more is not enough. It is necessary to also state what effect they had and if no effect why they had no effect. Otherwise what would be the point of filing declarations. The declarations are from professionals that have used the training apparatus and seen the positive results achieved. They certainly show commercial success. If the examiner does not agree, then applicant is entitled to know why so that a position can be articulated at the Board of Appeals.

Reconsideration is respectfully requested and claims 12 and 14 - 23 allowed, or the points raised above addressed so that a meaningful appeal can be undertaken.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Felix J. D'Ambrosio', with a long horizontal flourish extending to the right.

Felix J. D'Ambrosio  
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